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ABSTRACT

This staff brief discusses the juvenile justice system in five states which have enacted specific statutory provisions directed at the violent and chronic juvenile offender. Approaches adopted by California, Illinois, New Jersey, New York, and Washington are described which include: (1) various ways of automatically waiving or transferring youths charged with certain crimes from juvenile court jurisdiction to criminal court jurisdiction; (2) excluding certain serious offenses from juvenile court jurisdiction (e.g., murder, rape, arson); (3) lowering the age at which all young offenders come under the jurisdiction of criminal courts; and (4) imposing mandatory periods of incarceration, upon conviction, for specific offenses. Also included in this report are summaries of responses of various state officials to an inquiry regarding the effectiveness of their state's juvenile justice system. The appendix contains the juvenile disposition sentencing standards for the state of Washington which became effective July 1, 1983. (NRB)

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ANALYSIS OF SELECTED STATE LAWS DIRECTED AT VIOLENT AND CHRONIC JUVENILE OFFENDERS

STAFF BRIEF 84-13

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November 15, 1984
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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Juvenile Offender Dispositions — November 15, 1984

STAFF BRIEF 84-13*

ANALYSIS OF SELECTED STATE LAWS DIRECTED AT VIOLENT AND CHRONIC JUVENILE OFFENDERS

INTRODUCTION

In response to the perceived failure of the juvenile justice system to deal adequately with violent and chronic juvenile offenders, a number of states have recently enacted laws which specifically focus on these categories of juvenile offenders. Approaches adopted by these states include:

1. Various ways of automatically waiving or transferring youths charged with certain crimes from juvenile court jurisdiction to criminal court (the criteria for transfer sometimes requiring previous felony convictions);

2. Excluding certain serious offenses from juvenile court jurisdiction (e.g., murder, rape, arson);

3. Lowering the age at which all young offenders come under the jurisdiction of criminal courts; and

4. Imposing mandatory periods of incarceration, upon conviction, for specific offenses (previous convictions sometimes being required).

This Staff Brief discusses the juvenile justice system in five states which have enacted specific statutory provisions directed at the violent and chronic juvenile offender: California, Illinois, New Jersey, New York and Washington.

The Staff Brief also summarizes the responses of various state officials to an inquiry regarding the effectiveness of their state's juvenile justice system. Specifically, the letter of inquiry requested "...information upon which to judge the rehabilitative, punitive and deterrent effect" of statutes which specifically address the problem of violent or chronic juvenile offenders.

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*This Staff Brief was prepared by Don Salm, Staff Attorney, and Shaun Haas, Senior Staff Attorney, Legislative Council.

PART I

CALIFORNIA

A. DESCRIPTION

1. Waiver Provision: "Presumptive" Offenses

California has special waiver provisions for a minor who is alleged to have committed one of certain specified serious offenses when he or she was 16 years of age or older. Among the offenses specified are murder or attempted murder; arson of an inhabited building; robbery while armed with a dangerous or deadly weapon; rape with force or violence; kidnapping for ransom or with bodily harm; and assault with a firearm or destructive device.

A minor 16 years of age or older who is alleged to have committed one of these offenses is presumed to be not a "fit and proper" subject to be dealt with under the juvenile court law. However, this presumption may be rebutted if the juvenile court makes a finding that the minor would be "amenable to the care, treatment, and training program available through the facilities of the juvenile court." The finding must be based upon an evaluation of evidence relevant to each of the following criteria:

a. The degree of criminal sophistication exhibited by the minor.

b. Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

c. The minor's previous delinquent history.

d. Success of previous attempts by the juvenile court to rehabilitate the minor.

e. The circumstances and gravity of the offenses alleged to have been committed by the minor.

In particular, the statutes require that a determination by the court that the minor is a fit and proper subject for juvenile court must be based on findings that the minor is fit and proper "under each and every one of the above criteria." [See s. 707, California Welfare and Institutions Code (1984 Supp.).]

The effect of the presumption is to shift the burden of proof of fitness to the minor. For a minor to rebut or disprove the presumption,

he or she must produce evidence on the enumerated criteria, including evidence of extenuating or mitigating circumstances.

A minor who is committed to the California Youth Authority as the result of violating any of the "presumptive" offenses described above (i.e., the minor was found fit and proper for the juvenile system and determined to be delinquent) must be "discharged" by the Authority upon the expiration of a two-year "period of control," or whenever the person reaches his or her 25th birthday, whichever occurs later, unless an order for further detention has been made by the committing court as described in Item 2, below. It should be noted that the Youth Authority loses jurisdiction in other delinquency cases at age 21 or at the expiration of a two-year period of control, whichever occurs later. [See s. 1769 (b), California Welfare and Institutions Code (1984 Supp.).]

The "control" provision does not require a person to be placed in an institution or training school for the entire two-year period of time. However, as a practical matter, a person committed to the Youth Authority for a "presumptive offense" is a likely candidate for institutionalization.

2. Jurisdiction Over Juvenile Offender Beyond Age 21 or 25

a. Commitment to State Prison Upon Discharge from Youth Authority Control

Except in the case of persons who have been convicted of certain specified serious offenses (see discussion of "presumptive offenses" in Item 1, above) and persons whose control by the Youth Authority has been extended (see discussion under Item b, below), persons committed to the Department of Youth Authority must be discharged upon the expiration of a two-year period of control or when they reach their 21st birthday, whichever occurs later. Persons who have been found to have committed certain specified serious offenses must be discharged upon the expiration of a two-year period of control or when they reach their 25th birthday, whichever occurs later [s. 1769, California Welfare and Institutions Code (1984 Supp.)].

The Parole Board is required to petition the committing court to obtain further commitment to a state prison, (i) if the date of discharge occurs before the expiration of a period of control equal to the maximum term prescribed by law for the offense of which the person was convicted; and (ii) if the Youthful Offender Parole Board believes that "unrestrained freedom for said person would be dangerous to the public." The petition must be accompanied by a written statement of the facts upon which the

Board bases its opinion that discharge from its control would be dangerous to the public.

Upon the filing of a petition advocating against discharge, the court must notify the affected person that he or she may appear at a court hearing on the petition, with the aid of counsel and the right to compel the attendance of witnesses and produce evidence. When the person is unable to provide his or her own counsel, the court must appoint counsel. In the case of certain serious offenses, such as rape or murder, the district attorney of the county from which the person was committed and the law enforcement agency which investigated the case must be notified by the Youthful Offender Parole Board. The Board is also required to send written notice to the victim of the rape or the next of kin of the person murdered, if he or she requests notice from the Board and keeps it apprised of a current mailing address.

At the conclusion of the hearing, the committing court may "discharge the person, admit him or her to probation or may commit him or her to the state prison." The maximum term of imprisonment for a person committed to a state prison is a period equal to the maximum term prescribed by law for the offense of which he or she was convicted, less the period during which he or she was under the control of the Youth Authority [ss. 1780 to 1782, California Welfare and Institutions Code (1984 Supp.)].

b. Determination by Youthful Offender Parole Board that Person Is "Physically Dangerous" to Public

Under California law, control may be extended, if the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required by law (i.e., at age 21 or 25 or at the conclusion of the two-year "period of control," if later) would be physically dangerous to the public, because of the person's mental or physical deficiency, disorder or abnormality. To obtain an extension, the Board, through its chairperson, must make application to the committing court for an order directing that the person remain subject to the control of the Youth Authority beyond such time. The application must be filed at least 90 days before the time discharge is otherwise required and must be accompanied by a written statement of the facts upon which the Board bases its opinion that discharge from control of the Youth Authority at the time stated would be "physically dangerous to the public."

If, after a full hearing, the court is of the opinion that discharge of the person "...would be physically dangerous to the public because of his [or her] mental or physical deficiency, disorder, or abnormality, the court must order the Youth Authority to continue the treatment of such person." If the court is of the opinion that discharge of the person from

continued control of the Youth Authority would not be physically dangerous to the public, the court must order the person to be discharged from control of the Authority.

If the person is ordered returned to the Youth Authority following a hearing by the court, the person may file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the county in which he or she was committed. The following question must be submitted to the jury: "Is the person physically dangerous to the public because of his mental or physical disorder, or abnormality?" The trial must be as provided by law for the trial of civil cases and a verdict by at least 3/4ths of the jury is required.

When an order for continued detention is made, the control of the Youth Authority over the person continues. However, unless the person is previously discharged, the Youthful Parole Board must file a new application for continued detention, within two years after the date of order in the case of persons committed by the juvenile court, or within two years after the date of such order in the case of persons committed after conviction in criminal proceedings. Such applications may be repeated at intervals as often as the Board is of the opinion that detention may be necessary for the protection of the public. However, the Department of Youth Authority has the power, in order to protect other persons in the custody of the department, to transfer the custody of any person over 21 years of age to the Director of Corrections for placement in the appropriate institution.

A person must be discharged from the control of the Youth Authority at the termination of the two-year period unless the Board has filed a new application and the court has made a new order for continued detention [ss. 1800 to 1802, California Welfare and Institutions Code (1984 Supp.)].

B. EVALUATION

1. Evaluation by James Rowland, Director, California Department of Youth Authority

Mr. Rowland responded to the request for information on the effectiveness of California's system of dealing with violent or chronic juvenile offenders in a letter dated September 14, 1984. In particular, he responded to a request for information relating to the rehabilitative, punitive and deterrent effects of the California system.

Mr. Rowland stated that "hard data on the effectiveness of these policies" is not available. He did offer the following observations about persons in the custody of the California Department of Youth Authority:

> [1] Virtually all of our admissions are chronic offenders in that they have extensive prior records. Sixty-five percent of our 1983 admissions had a prior county commitment and averaged 2.5 prior convictions or sustained petitions. More than 40% were committed for a violent type of offense.
>
> [2] The postrelease performance of these already chronic and often violent offenders is consistent with what one would expect, with 49.7% failing on parole after 24 months.
>
> [3] ...[A]ll of our programs are geared for serious chronic offenders. For those who are emotionally disturbed there are six special intensive treatment programs. A recent study of these programs indicated that they have been very effective in reducing the youths' psychotic symptoms and improving their behavior, but only moderately effective in reducing subsequent delinquency to an extent greater than would be expected from a regular program.
>
> [4] The effects of recent policies which have moved toward greater emphasis on incapacitation, deterrence and just deserts have possibly had a subtle dampening effect on rehabilitative efforts. But that has not been the official policy of this agency, and efforts to maintain our psychological counseling and improve our educational and vocational training have continued and have even been increased.
>
> [5] A longer average length of stay of wards (from 11 months in 1977 to 15.4 months in 1983) has been more a consequence of the general social climate to which our Youthful Offender Parole Board has responded, rather than to legislative statutes. Longer lengths may better serve the goal of public protection even though they tend to lead to overcrowding which is a serious problem now confronting us.

Mr. Rowland concluded his comments by pointing to the difficulty of measuring the deterrent effects of different sentencing policies and suggesting that the certainty and swiftness with which the justice system responds to criminal acts may be a better deterrent than imposing more severe sentences. Mr. Rowland commented that:

> ...measuring the deterrent effects of different sentencing policies continues to baffle the experts. We are in no better position to evaluate the effects of such policy changes. Our best advice here would be consistent with that of the experts to the effect that imposing more severe sentences probably has less of a deterrent effect than do the certainty and swiftness with which the justice system responds to criminal acts. Longer lengths of stay can be better justified on the basis of just deserts and public protection rather than impact on recidivism. Similarly, the long-term effects of making easier the placement of juveniles in adult prisons are unclear, but we cannot argue against the reality that while these youths are in the institutions their criminal activities are at least temporarily deterred.

2. Evaluation by Juvenile Court Law Revision Commission

An evaluation of the California juvenile court law was undertaken by the Juvenile Court Law Revision Commission (JCLRC) pursuant to legislative directive. The genesis of this legislation was a legislative finding that "the problems of serious juvenile crime and delinquency have escalated throughout the state and are of a vastly different character today than they were 20 years ago," at the time the last commission revised the juvenile court law.

Three major recommendations, which were directed at violent juvenile offenders, resulted from the JCLRC evaluation. These recommendations are:

a. Determinate sentencing for convicted remanded minors. Minors who have been remanded to adult court and convicted of certain violent offenses (see discussion in Section A, 1, above) should be treated the same as adults and receive a determinate sentence. The Commission further recommended that those minors committed to the Youth Authority who have not completed their terms by age 25 should be transferred to the California Department of Corrections for the remainder of their sentence.

b. Restrictions imposed on Youthful Offender Parole Board parole discretion. A series of fundamental revisions should be made in the way in which the Youthful Offender Parole Board "parole consideration dates" are derived, the manner in which the Board grants paroles and the monitoring techniques made available to the public to oversee Board actions.

Specifically, the JCLRC recommended that: (1) the Youthful Offender Parole Board's parole consideration date guidelines for all serious offenders, except first- and second-degree murder, should be set by taking 50% of the maximum term for which an adult could be committed for the same offense; (2) a deviation of 25% more or less than the parole consideration date guideline should be permitted; and (3) if the average parole release date for any offense exceeds the deviation percentage of 25%, a right of action should vest in any California citizen to bring an action in court to compel the Parole Board to conform its actual parole release decisions to the 25% deviation of the predetermined guideline.

c. Imposition of mandatory minimum periods of confinement for nonremanded minors who commit murder. Mandatory minimum periods of confinement should be imposed on minors who have not been remanded to adult court and who have committed either first- or second-degree murder.

PART II

ILLINOIS

A. DESCRIPTION

Under the Illinois waiver statute, a minor 13 years of age or over may be waived to adult court on the motion of the state's attorney (comparable to a district attorney in Wisconsin) and on the decision of the juvenile court judge, after investigation and hearing [Title 37, par. 702-7 (3), Ill. Annot. Stats. (1984-85 Supp.)]. The State of Illinois also has several additional statutory provisions directed at the serious violent or habitual juvenile offender.

1. Serious Offenses Excluded from Juvenile Court Jurisdiction

Under Illinois law, a minor who was at least 15 years of age at the time of the offense and is charged with one of the following must be prosecuted in adult criminal court:

a. Murder;

b. Rape;

c. Aggravated sexual assault; and

d. Armed robbery if the armed robbery was committed with a firearm [Title 37, par. 702-7 (6) (a), Ill. Annot. Stats. (1984-85 Supp.)].

2. Habitual Juvenile Offender Statute

Under the Illinois "Habitual Juvenile Offender" statute, any minor having been twice adjudicated a delinquent minor for offenses which, had he or she been prosecuted as an adult, would have been felonies under Illinois law, and who is thereafter adjudicated a delinquent minor for a third time, must be adjudged an habitual juvenile offender where:

a. The third adjudication is for an offense occurring after adjudication on the second; and

b. The second adjudication was for an offense occurring after adjudication on the first; and

c. The third offense occurred after January 1, 1980; and

d. The third offense was based upon the commission of or attempted commission of the following offenses: murder, voluntary or involuntary manslaughter; criminal sexual assault or aggravated sexual assault; aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim; burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings; home invasion; robbery or armed robbery; or aggravated arson.

Any minor adjudged an habitual juvenile offender must be committed to the Illinois Department of Corrections until his or her 21st birthday, without possibility of parole, furlough or non-emergency authorized absence from confinement of any sort. However, the minor is entitled to earn one day of good conduct credit for each day served as reductions against the period of his or her confinement. Any minor prosecuted as an habitual juvenile offender has the right to trial by jury.

The statute specifies that the habitual juvenile offender provision does not preclude the state's attorney from seeking to prosecute a minor as an adult, as an alternative to prosecution as an habitual juvenile offender [Title 37, par. 705-12, Ill. Annot. Stats. (1984-85 Supp.)].

3. Mandatory Transfer Statute

Under Illinois law, all offenders who are under 17 years of age when sentenced to imprisonment must be committed to the Juvenile Division of the Department of Corrections for a definite term. The order of commitment becomes the sentence of the court whenever the control and custody of the offender is transferred to the Adult Division of the Department of Corrections.

The order of commitment may be amended by the court while jurisdiction is retained. The committing court retains jurisdiction until the offender reaches the age of 21, unless earlier discharged. However, the Juvenile Division is required to notify the sentencing court and the state's attorney of the county from which the juvenile was sentenced within 30 days from the date that the juvenile reaches the age of 17.

Upon receiving a notice, the sentencing court is required to conduct a hearing to determine whether or not the juvenile should continue to remain under the auspices of the Juvenile Division or be transferred to the Adult Division of the Department of Corrections.

Confinement of a juvenile committed for an indeterminate sentence at a criminal proceeding must terminate at the expiration of the maximum term of imprisonment. However, if the maximum term of imprisonment does not

expire until after the juvenile's 21st birthday, he or she continues to be subject to the control and custody of the Department and, on his or her 21st birthday, the juvenile must be transferred to the Adult Division. If the juvenile is on parole on his or her 21st birthday, his or her parole supervision may be transferred to the Adult Division.

A hearing to determine whether or not a juvenile should continue to remain under the auspices of the Juvenile Division or to be transferred to the Adult Division of the Department of Corrections requires the court to consider the following factors:

a. The seriousness of the offense to the community and whether the protection of the community requires transfer.

b. Whether the offense was committed in an aggressive, violent, premeditated or wilful manner.

c. Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted.

d. The sophistication and maturity of the juvenile as determined by consideration of his or her home, environmental situation, emotional attitude and pattern of living.

e. The record and previous history of the juvenile, including previous contacts with the Juvenile Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to the juvenile court or prior commitments to juvenile institutions.

f. The prospects for adequate protection to the public and the likelihood of reasonable rehabilitation of the juvenile or the use of procedures, services and facilities currently available to the Juvenile Division.

Illinois law further provides that all relevant factors listed above need not be resolved against the juvenile in order to justify such a transfer. A juvenile court, upon granting a transfer order, is required to accompany the order with the statement of reasons or considerations for the transfer [Title 38, pars. 1003-10-7 and 1005-8-6 (c), Ill. Annot. Stats. (1984-85 Supp.)].

B. EVALUATION

In responding to the question raised regarding the rehabilitative, punitive and deterrent effects of the Illinois Habitual Juvenile Offender Act and the Mandatory Transfer Act, Michael P. Lane, Director, Illinois Department of Corrections, in a letter dated September 6, 1984, observed:

> These two acts were not passed to deal with rehabilitation or to serve as a deterrent. Rather, these acts were enacted to ensure that violent and/or chronic juvenile offenders would be incarcerated for longer periods of time.
>
> It was felt that violent offenders should be dealt with in adult courts and be given adult sentences. The goal, therefore, was a modest goal; that of the incapacitation of the offender.

Mr. Lane observed that the average length of stay of violent or chronic juvenile offenders, if convicted in the juvenile court, "...would be about twenty-six (26) months. The length of stay under a mandatory transfer with a finding in the adult court has been estimated to be about ten (10) years."

Mr. Lane noted that:

> The inherent issues to be dealt with by this department are one of programming for a segment of juvenile offenders for a longer period of time; the influence upon population and accurate population projections; and the fact that at age 21, the majority of these juveniles will be transferred to the Adult Division.

Mr. Lane provided the following statistics on commitments and transfers:

Juvenile Commitments under Mandatory Transfer Act

1981 = 61 1982 = 63

Juveniles Transferred from the Juvenile Court

1983 = 146 Jan. - June 1984 = 79

Regarding the Habitual Offender Act, Mr. Lane explained that this Act:

> ...was also passed with a simple goal in mind; that of a longer period of incarceration for the chronic offender. These cases, however, remain, and are heard in the juvenile court. The Act has not been used very much in prosecution to date in this state [as evidenced by the following statistics:].

Juvenile Commitments Under Habitual Offender Act

1983 = 7 Jan. - May 1984 = 1

Mr. Lane concluded, stating:

> I would continue to support some type of program to deal with these types of offenders. We have also been given a federal grant to assist us in developing a program for such offenders upon re-entry in the community. It is important that all segments of the juvenile justice system be involved in planning of any legislation impacting on juvenile offenders. In particular, one must look at the fiscal impact and population projections.

PART III

NEW JERSEY

A. DESCRIPTION

1. Incarceration: Aggravating and Mitigating Factors

Under New Jersey law, in determining whether incarceration is an appropriate disposition in a particular case, the juvenile court must consider the following aggravating and mitigating circumstances:

a. Aggravating Circumstances Include

(1) The fact that the nature and circumstances of the act, and the role of the juvenile in the act, indicate that it was committed in an especially heinous, cruel or depraved manner;

(2) The fact that there was grave and serious harm inflicted on the victim and that, based upon his or her age or mental capacity, the juvenile knew or reasonably should have known that the victim was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health or extreme youth, or was for any other reason substantially incapable;

(3) The character and attitude of the juvenile indicate that he or she is likely to commit another delinquent or criminal act;

(4) The juvenile's prior record and the seriousness of any acts for which he or she has been adjudicated delinquent;

(5) The fact that the juvenile committed the act pursuant to an agreement that he or she either pay or be paid for the commission of the act and that the pecuniary incentive was beyond that inherent in the act itself;

(6) The fact that the juvenile committed the act against a policeman or other law enforcement officer, correctional employe or fireman, acting in the performance of his or her duties while in uniform or exhibiting evidence of his or her authority, or the juvenile committed the act because of the status of the victim as a public servant;

(7) The need for deterring the juvenile and others from violating the law;

(8) The fact that the juvenile knowingly conspired with others as an organizer, supervisor or manager to commit continuing criminal activity in concert with two or more persons and the circumstances of the crime show that he or she has knowingly devoted himself or herself to criminal activity as part of an ongoing business activity; and

(9) The fact that the juvenile on two occasions was adjudged a delinquent on the basis of acts which, if committed by an adult, would constitute crimes.

b. Mitigating Circumstances Include

(1) The juvenile is under the age of 14;

(2) The juvenile's conduct neither caused nor threatened serious harm;

(3) The juvenile did not contemplate that his or her conduct would cause or threaten serious harm;

(4) The juvenile acted under a strong provocation;

(5) There were substantial grounds tending to excuse or justify the juvenile's conduct, though failing to establish a defense;

(6) The victim of the juvenile's conduct induced or facilitated its commission;

(7) The juvenile has compensated or will compensate the victim for the damage or injury that the victim has sustained or will participate in a program of community service;

(8) The juvenile has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present act;

(9) The juvenile's conduct was the result of circumstances unlikely to reoccur;

(10) The character and attitude of the juvenile indicate that he or she is unlikely to commit another delinquent or criminal act;

(11) The juvenile is particularly likely to respond affirmatively to noncustodial treatment;

(12) The separation of the juvenile from his or her family by incarceration would entail excessive hardship to the juvenile or the juvenile's family;

(13) The willingness of the juvenile to cooperate with law enforcement authorities; and

(14) The conduct of the juvenile was substantially influenced by another person more mature than the juvenile [s. 2A:4A-44a (1) and (2), N.J. Stats. Annot. (1983-84 Supp.)].

2. Presumption of Nonincarceration

Under New Jersey law, there is a presumption of nonincarceration for any crime or offense of the fourth degree or less committed by a juvenile who has not previously been adjudicated delinquent or convicted of a crime or offense.

In addition, the following juveniles may not be committed to a state correctional facility:

a. Juveniles who are 11 years of age or under unless adjudicated delinquent for the crime of arson or a crime which, if committed by an adult, would be a crime of the first or second degree (e.g., first-degree murder); and

b. Juveniles who are "developmentally disabled" as defined in New Jersey law [s. 2A:4A-44b (1), N.J. Stats. Annot. (1983-84 Supp.)].

3. Sentences

When the court determines that, based on the consideration of all the factors set forth in Item 1, above, the juvenile must be incarcerated, the court: (a) must state on the record the reasons for imposing incarceration, including any findings with regard to these factors; and (b) commit the juvenile to a suitable institution maintained by the Department of Corrections for the rehabilitation of delinquents.

The juvenile must be committed for a term not to exceed the following maximum terms for what would constitute the following crimes if committed by an adult:

a. Murder (where actor [juvenile] purposely or knowingly causes death) . . . . . 20 years

b. Murder (committed during commission of certain specified crimes) . . . . . 10 years

c. Crimes of the first degree, except murder (e.g., armed robbery, kidnapping, aggravated sexual assault) . . . . . 4 years

d. Crime of the second degree (e.g., sexual assault, robbery, manslaughter, armed burglary) . . . . . 3 years

e. Crime of the third degree (e.g., burglary, arson) . . 2 years

f. Crime of the fourth degree (e.g., criminal trespass, vehicular homicide, theft between $200-$500) . . . . 1 year

g. Disorderly persons offense . . . . . 6 months

The period of confinement must continue until the appropriate paroling authority determines that the person should be paroled. However, in no case may the period of confinement and parole exceed the maximum provided by law for the offense (i.e., the adult sentence). If a juvenile is approved for parole prior to serving 1/3rd of any term imposed for any crime of the first, second or third degree, including any extended term imposed pursuant to Item 4, below, or 1/4th of any term imposed for any other crime, the granting of parole must be subject to approval of the sentencing court [s. 2A:4A-44d (1) and (2), N.J. Stats. Annot. (1983-84 Supp.)].

4. Extended Incarceration

Upon application by the prosecutor, the court may sentence a juvenile who has been convicted of a crime of the first, second or third degree, if committed by an adult, to an extended term of incarceration beyond the maximum set forth in Item 3, above, if it finds that:

a. The juvenile was adjudged delinquent on at least two separate occasions, for offenses which, if committed by an adult, would constitute a crime of the first or second degree; and

b. The juvenile was previously committed to an adult or juvenile state correctional facility.

The extended term may not exceed: (a) five additional years for an act which would constitute murder; (b) two additional years for all other crimes of the first degree or second degree; and (c) one additional year for a crime of the third degree.

When a juvenile is before the court at one time for disposition of three or more related offenses which, if committed by an adult, would constitute crimes of the first, second or third degree and which are not part of the same transaction, the prosecutor may apply for extended incarceration. The court may then sentence the juvenile to an extended term of incarceration not to exceed the maximum of the permissible term for the most serious offense for which the juvenile has been adjudicated, plus two additional years [s. 2A:4A-44d (3) and (4), N.J. Stats. Annot. (1983-84 Supp.)].

5. Waiver to Adult Court

On motion of the prosecutor, the court must, without the consent of the juvenile, waive jurisdiction over a case and refer that case from the family court to adult court if it finds, after hearing, that:

a. The juvenile was 14 years of age or older at the time of the charged delinquent act; and

b. There is probable cause to believe that the juvenile committed a delinquent act or acts which, if committed by an adult, would constitute:

(1) Criminal homicide other than death by automobile, first-degree robbery, aggravated sexual assault, sexual assault, second-degree aggravated assault, kidnapping or aggravated arson;

(2) A crime committed at a time when the juvenile had previously been adjudicated delinquent, or convicted, on the basis of any of the offenses enumerated in Item (1);

(3) A crime committed at a time when the juvenile had previously been sentenced and confined in an adult penal institution;

(4) An offense against a person committed in an aggressive, violent and wilful manner, other than an offense enumerated in Item (1), or the unlawful possession of a firearm, destructive device or other prohibited weapon, or arson;

(5) A violation of the prohibition against manufacturing or distributing certain controlled dangerous substances;

(6) Crimes which are a part of a continuing criminal activity in concert with two or more persons and the circumstances of the crimes show the juvenile has knowingly devoted himself or herself to criminal activity as a source of livelihood; or

(7) An attempt or conspiracy to commit any of the acts enumerated in Items (1), (4) or (5); and

c. Except with respect to any of the acts enumerated in Item (1) or any attempt or conspiracy to commit any of those acts, the state has shown that the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver.

However, waiver must not be granted, if in any case the juvenile can show that the probability of his or her rehabilitation by the use of the procedures, services and facilities available to the court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver [s. 2A:4A-26, N.J. Stats. Annot. (1983-84 Supp.)].

B. EVALUATION

Thomas F. Lynch, Jr., Assistant Commissioner, Division of Juvenile Services, Department of Corrections, responded to the request for information regarding the rehabilitative, punitive and deterrent effects of the New Jersey system for handling violent and chronic juvenile offenders in a letter dated October 1, 1984. Mr. Lynch began by noting that the recently-enacted statutes of New Jersey have "only begun to be implemented":

> The full impact of the new legislation is yet to be realized within the rehabilitative, punitive and deterrent areas and, thus, specific information regarding the law's effectiveness is not available.

In lieu of specific information evaluating the effectiveness of the New Jersey system, Mr. Lynch offered several "candid" opinions regarding the law's effectiveness and described the various means by which the Division of Juvenile Services has undertaken to adjust to the law and provide services to the violent or chronic juvenile offender.

Mr. Lynch explained that there are special programs in New Jersey designed to meet the distinct needs of the chronic or violent juvenile offender:

> The Juvenile Medium Security Facility has a unit which copes with those youths committed for homicides. It is geared to work with the youth who is under a long sentence--a sentence which could warrant his release as an adult in his late 20's or early 30's. Juveniles placed in this unit receive special counseling and understanding during their treatment process. That specialized treatment has in many cases allowed us to approach the bench and request reconsideration of sentence or modification of parole requirements in order to allow an earlier release into the community of such convicted juvenile person.
>
> The GENESIS pilot offender project, currently being funded by OJJDP [U.S. Office of Juvenile Justice and Delinquency Prevention] and studies by [the] URSA [Institute], provides a new methodology of reaching the violent juvenile offender. Although only in its third year of operation, the program shows signs of success in dealing with that atypical behaving youth in adapting him to a successful life within the community. There has been much documentation (research files) already on this subject. Final conclusions are not expected for at least another 18 months.

Commenting on the success of programs directed at violent or chronic juvenile offenders, Mr. Lynch explained:

> Personal observations over the past years indicate to me the ability of our programs to "reach" these youth and turn them around with much success. A few of those youth have even entered our para-professional program and upon parole have been given positions within our numerous juvenile programs. I feel that those and others can better relate to specific juveniles and accompanying offenses primarily because those employes have been there, have a greater understanding and are able to motivate the youngsters under our care. Legislative mandates do provide concern to me and my staff, but the ability to communicate with the judges and provide various and diverse means of addressing the special needs in resocialization of chronic and violent offenders is allowing for the earlier release of those offenders.

Regarding aftercare programs, Mr. Lynch stated:

> I must be candid in explaining that New Jersey does not have a real system of providing support to the newly released juvenile offenders. Aftercare is the usual meeting [with] a parole officer once or twice a month. This need for aftercare is real and is being addressed on several levels, hopefully resulting in a much improved system of aftercare which will reduce the low recidivism even lower. Further, there are and will continue to be those juveniles who will only be able to function in institutional confines and will progress to higher levels of security confinement in adult institutions. Thankfully, the number of such individuals is quite low and recidivism, which is not measured or quantified in this state, will drop further.

Mr. Lynch also discussed the efforts in New Jersey to deinstitutionalize programs and promote placement in community programs, as follows:

> The thrust of the Division's actions in working with juvenile offenders is within the confines of deinstitutionalization and placements within community programs. The community programs developed over the past four years allow placement of youths into diversionary projects near community areas which can allow for work projects to be undertaken in the cities and municipalities. Although we have fought hard to allow placement of such facilities and programs in various communities, the success met and measured far outweighs the many meetings, confrontations and arguments which we had in many communities.

Regarding possible improvements in the Wisconsin system, Mr. Lynch recommended the development of legislation emphasizing "...diversion and techniques of meeting the needs of kids in crisis prior to commitments." Specifically, he suggested:

> Day programs for probationers, residential programs for probationers or a combination of probationers/committed juveniles within community programs can go far in the prevention of further

continuation by the youths in the juvenile justice system.

Mr. Lynch also suggested that: "Assessments of juveniles, while in detention facilities, can provide a bridge between the resocialization and re-entrance into the community." He said that "the courts can provide access to many social agencies dealing with juveniles and can bring pressure on those agencies to offer a multitude of treatment alternatives and care programs."

Mr. Lynch also provided information on a recently funded S.L.E.P.A. [State Law Enforcement Planning Agency] project--Youth Advocacy, which he said was designed to meet the diversionary and review program of youth under sentence to institutions. Mr. Lynch explained that this was a joint effort between the Division of Juvenile Services and the Youth Services Commission. He explained that the Youth Services Commission is under the jurisdiction of the New Jersey Chief Justice and stated that the Chief Justice "...has been instrumental in seeing the needs of juvenile offenders and of implementing awareness and projects to meet those varying and distinct needs." He concluded that "the project is within its first months of operation and already progress is being measured by successful alternative placements of juvenile offenders."

PART IV

NEW YORK

A. DESCRIPTION

1. Designated Felony Acts

Under New York law, a "juvenile delinquent" is a person over seven and less than 16 years of age, who commits an act which would be a crime if committed by an adult. Juveniles who commit designated felony acts are subject to special dispositions. "Designated felony act" means any of the following acts which, if done by an adult, would be a crime:

a. Murder (first or second degree), kidnapping (first degree) or arson (first degree), committed by a juvenile 13, 14 or 15 years of age. These acts are also referred to as "designated Class A felony acts."

b. Assault (first degree), manslaughter (first degree), rape (first degree), sodomy (first degree), aggravated sexual abuse, kidnapping (second degree) where the abduction involved the use or threat of deadly physical force, arson (second degree) or robbery (first degree), committed by a juvenile 13, 14 or 15 years of age.

c. Attempted murder (first or second degree) or kidnapping (first degree), committed by a juvenile 13, 14 or 15 years of age.

d. Burglary (first or second degree) or robbery (second degree), committed by a juvenile 14 or 15 years of age.

e. Assault (second degree) or robbery (second degree), committed by a juvenile 14 or 15 years of age, but only if the juvenile has previously committed an act which, if committed by an adult, would be the crime of assault (second degree), robbery (second degree) or any of the crimes specified in Items a to c, above. The specific age of the juvenile at the time of the commission of the prior act is not relevant.

f. Any other crime, other than a misdemeanor, committed by a juvenile at least seven but less than 16 years of age, but only where there has been two prior findings by the court that the juvenile has committed a prior felony act.

2. Restrictive Placement Finding

If a juvenile is found to have committed a designated felony act, the disposition order must include a finding as to whether the juvenile does or does not require "restrictive placement" (discussed below). In determining whether a restrictive placement is required, the court must consider and make specific written findings of fact as to each of the following elements:

a. The needs and best interests of the juvenile;

b. The record and background of the juvenile;

c. The nature and circumstances of the offense, including whether any injury was inflicted by the juvenile or another participant;

d. The need for protection of the community; and

e. The age and physical condition of the victim.

Notwithstanding these provisions, the court must order a restrictive placement in any case where the juvenile is found to have committed a designated felony act in which he or she inflicted serious physical injury (as defined in the statutes) upon another person who is 62 years of age or more.

3. Restrictive Placement for Designated Class A Felony Acts

When the order is for a restrictive placement in the case of a juvenile found to have committed a designated Class A felony act, the order must provide that:

a. The juvenile must be placed with the Division for Youth for an initial period of five years.

b. The juvenile initially must be confined in a secure facility for a period set by the order, to be not less than 12 nor more than 18 months.

c. After the period set under Item b, the juvenile must be placed in a residential facility for a period of 12 months.

d. The juvenile may not be released from a secure facility or transferred to a nonsecure facility during the period provided in Item b, nor may the juvenile be released from a residential facility during the period provided in Item c.

e. No home visits are permitted during the period of secure confinement set by the court order or for one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be "accompanied home visits": (1) while a youth is confined in a secure facility; (2) while a youth is confined in a nonsecure residential facility within six months after confinement in a secure facility; and (3) while a youth is confined in a nonsecure residential facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" means a home visit during which the youth is accompanied at all times while outside the secure or residential facility by appropriate personnel of the Division for Youth.

During the juvenile's placement or any extension of the placement:

a. After the expiration of the period provided, the juvenile may not be released from a residential facility without the written approval of the Director of the Division for Youth or the designated deputy director.

b. The juvenile must be subject to intensive supervision whenever he or she is not in a secure or residential facility.

c. The juvenile may not be discharged from the custody of the Division for Youth, unless a motion for discharge is granted by the court, which motion may not be made prior to the expiration of three years of the placement.

d. Unless otherwise specified in the order, the Division for Youth must report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended on a petition of any party or the Division for Youth after a dispositional hearing, for an additional period not to exceed 12 months, but no initial placement or extension of placement under this provision may continue beyond the respondent's 21st birthday.

4. Restrictive Placement for Other Designated Felony Acts

Similar provisions to those discussed in Item 3, above, apply to restrictive placement dispositions for juveniles found to have committed designated felony acts other than designated Class A felony acts, except that:

a. The initial placement with the Division for Youth is three years, not five years.

b. The juvenile must be confined in a secure facility for not less than six nor more than 12 months, instead of 12 to 18 months.

c. After the period in Item b, the juvenile must be placed in a residential facility for not less than six nor more than 12 months, instead of a set 12 months [ss. 301.2 and 353.5, Consolidated Laws of New York Annot.].

B. EVALUATION

The effectiveness of the New York juvenile justice system is contained in The Juvenile Offender Act - A Study of the Act's Effectiveness and Impact on the New York Juvenile Justice System (February 1981), a study undertaken by Merril Sobie, Pace University School of Law, for the Foundation for Child Development, New York, New York.

In the study, Professor Sobie recommends, in general, that the New York Juvenile Offender Act should be restructured. He states:

> At a minimum, the Act is overbroad. It fails to serve its intended purpose and severely prejudices those children who should not be criminally charged and, indeed, whose cases are, eventually, moved to the family court.

The following specific recommendations and their justifications are offered by Professor Sobie:

> 1. Every juvenile offender case should be filed initially in the Family Court.
>
> The practice of filing juvenile offender cases in the adult criminal courts only to have the vast majority removed to the Family Court is prejudicial to the large majority of arrested youths and wastes scarce resources. It may also encourage

overcharging and grants the prosecutor plenary authority to determine the court in which the child will be tried. When coupled with the transfer provisions incorporated in recommendations four and five below, the proposed procedures will protect those youths, almost 90 percent of the total, whose cases are dismissed or removed, while insuring that the relatively small number of cases that should be criminally prosecuted are transferred to the adult courts for that purpose.

2. The crimes of a) first-degree burglary, b) second-degree burglary and c) second degree robbery should be eliminated as juvenile offenses, but retained as designated felonies.

The experience to date indicates that burglary is rarely prosecuted as a juvenile offense. Prosecution as a designated felony by Family Court will involve a possible three-year restrictive placement, a sufficiently severe sanction for a non-violent offense....

Second degree robbery cases are almost always removed to the Family Court (usually at an early stage) and, if not, are treated leniently by the criminal courts. The crime is simply not viewed as sufficiently serious to warrant adult sanctions. Its continuation as a juvenile offense is not justified.

3. The crimes of first-degree rape, first-degree sodomy, first-degree manslaughter, first-degree assault, and first-degree robbery should be class "A" designated felonies.

The above crimes are presently classified as "B" designated felonies. If the youth is prosecuted in the Family Court, the maximum penalty is therefore a three-year restrictive placement. Under the Juvenile Offender Act the same youth, if prosecuted in the criminal courts, would face a maximum sentence of from ten to 15 years.

Reclassifying the designated felony equivalents would narrow, though by no means eliminate, the dichotomy between Family Court and the criminal

courts and would thereby decrease the tendency to criminally prosecute many youths in the adult system. However, the imposition of a five-year restrictive placement should be purely discretionary and the court should be empowered to place youths restrictively for either three or five years (or, for that matter, refrain from ordering any restrictive placement).

4. The small number of juvenile offender cases involving second-degree murder, first-degree manslaughter, first-degree rape, first-degree sodomy, and first-degree arson should be transferred to the criminal courts at the request of the District Attorney and only upon a finding of probable cause.

This recommendation provides for the transfer of very serious cases to the adult system upon the request of the District Attorney. The decision would be a prosecutorial one, and the court would lack the authority to refuse such a request.

The recommendation would continue the adult prosecution of almost every case involving the above crimes that are today so prosecuted. However, by initiating the action in the Family Court, those cases that would today be removed from the criminal courts would be spared such prosecution. For example, approximately 40 percent of murder cases filed under the Act fail to reach criminal indictment. These cases would remain under the protective arm (or at least relatively protective environment) of the Family Court. The additional requirement that probable cause be found in the Family Court is meant to preclude, or at least diminish, the possibility of overcharging.

5. Every other juvenile offense case should be transferrable to the adult criminal courts at the discretion of the Family Court and upon a request by the District Attorney.

This proposal is similar to the provisions found in most states. If the prosecutor concludes that a given juvenile offense warrants criminal prosecution and is able to convince the court of

that fact, the case is transferred. The experience of the Juvenile Offender Act to date indicates that a request will be made in only a small percentage of the cases and will probably be granted only rarely. The recommendation will nevertheless continue to permit adult prosecution of those few cases which justify the possible application of adult penalties.

It should be noted that transfer will not be available for cases involving burglary or second degree robbery (recommendation three). For the very serious cases, transfer will be mandatory if requested by the District Attorney (recommendation four). Lastly, increasing the Family Court's dispositional powers will further minimize the use of adult prosecution (recommendation two).

6. The presentment or prosecution of all delinquency cases in the Family Court should be reviewed.

The present Family Court Act prosecutorial provisions involving the District Attorney, Corporation Counsel, and county attorneys can best be described as a patchwork of overlapping functions. The national trend in recent years has been to strengthen and unify prosecution. In fact, if New York had provided more effective prosecutorial services, the pressure for Juvenile Offender Act enactment would have been minimized. The entire range of prosecution services in the Family Court should be studied with a view toward unification and increased effectiveness.

The recommendations are intended to establish a better balance between the perceived need to protect the community (by increasing the penalty for the violent juvenile offender) and the need to protect those children who should not be criminally prosecuted in the adult courts. It should be stressed that the disposition or sentence of juvenile offenders will not be materially altered. Except for burglary and second-degree robbery, the possible maximum penalties would remain the same.

Juvenile offender proceedings would, however, be significantly modified. Instead of all cases starting down the road of adult prosecution only to have almost all diverted, none would automatically start down that road, and only those cases which should be criminally treated would be referred, with appropriate safeguards, to the criminal system. The overwhelming majority of accused juvenile offenders, whose cases are currently diverted from the criminal system, would thereby gain the protection and amelioration inherent in the juvenile courts. The ability to prescribe stringent penalties would not suffer, but the procedures would follow a more logical and equitable progression. The recommendations would also place New York closer to the mainstream of current American juvenile jurisprudence.

The fact that most juvenile offender cases, indeed almost all non-homicide cases, do not remain before the adult criminal courts (or, at most, result in sentences within the statutory authority of the Family Court) testifies to the good sense of the officials responsible for implementing the Act. There is no reason, however, to continue to hobble the system with inefficient and inequitable procedures. The Act should accordingly be modified substantially to protect the vast majority of children who do not require the severity of adult criminal prosecution or punishment.

PART V

WASHINGTON

A. DESCRIPTION

The State of Washington has a semi-determinate or presumptive sentencing scheme for juvenile offenders. It is based on the concept that accountability for an offense should be determined primarily by the seriousness of the offense, the age of the offender, the offender's prior criminal history and how recent that history is. The Legislature has delegated to an independent sentencing commission, called the Juvenile Disposition Standards Commission, the authority to adopt, subject to legislative review, "standard ranges" of sentences based on these criteria.

1. Juvenile Disposition Standards Commission

Members of the Juvenile Disposition Standards Commission are appointed by the Governor and approved by the Senate and include:

a. A superior court judge;

b. A prosecuting attorney or deputy prosecuting attorney;

c. A law enforcement officer;

d. An administrator of juvenile court services;

e. A public defender actively practicing in juvenile court; and

f. Three other persons who have demonstrated significant interest in the adjudication and disposition of juvenile offenders [s. 13.40.025, Revised Code of Washington (1983)].

2. Categories of Offenders

For purposes of sentencing, the Washington Code distinguishes three categories of juvenile offenders:

a. Serious Offenders

"Serious offender" is defined to mean a person 15 years of age or older who has committed an offense which, if committed by an adult, would be:

(1) A Class A felony (e.g., murder, first-degree rape, arson, kidnapping or robbery), or an attempt to commit a Class A felony;

(2) Manslaughter in the first degree or rape in the second degree; or

(3) Assault in the second degree, extortion in the first degree, indecent liberties, kidnapping in the second degree, robbery in the second degree, burglary in the second degree, or statutory rape in the second degree, where such offenses include the infliction of bodily harm or where during the commission of, or immediate withdrawal from, such an offense the perpetrator is armed with a deadly weapon or firearm.

b. Minor or First Offenders

"Minor or first offender" is defined to mean a person 16 years of age or younger whose current offense or offenses and criminal history fall entirely within one of the following categories (i.e., are equal to or less than any of the following):

(1) Four misdemeanors;

(2) Two misdemeanors and one gross misdemeanor;

(3) One misdemeanor and two gross misdemeanors;

(4) Three gross misdemeanors;

(5) One Class C felony and one misdemeanor or gross misdemeanor; or

(6) One Class B felony except: any felony which constitutes an attempt to commit a Class A felony; manslaughter in the first degree; extortion in the first degree; indecent liberties; kidnapping in the second degree; robbery in the second degree; burglary in the second degree; statutory rape in the second degree; vehicular homicide; or arson in the second degree.

c. Middle Offenders

"Middle offender" is defined to mean a person who has committed an offense and who is neither a minor offender nor a serious offender (e.g.,

a juvenile who commits five or more misdemeanors) [s. 13.40.020 (1), (13) and (14), Revised Code of Washington (1983)].

3. Sentencing Options

The court's options in sentencing offenders vary by type of offender (see Schedules D-1 to D-3 in the State of Washington Juvenile Disposition Sentencing Standards, effective July 1, 1983, which are contained in Appendix A).

a. For serious offenders, the court has two options: (1) sentencing to the standard range; or (2) declaring a manifest injustice and imposing a disposition outside the standard range. "Manifest injustice" is defined to mean a disposition that would either impose an excessive penalty on the juvenile or would impose a serious and clear danger to society in light of the purposes of the juvenile code.

b. For middle offenders (Schedule D-2), the court has three options: (1) sentencing to the standard range; (2) sentencing to community supervision (maximum of $100 fine, 150 hours community service, one year of community supervision and after stating aggravating/mitigating circumstances, up to 30 days confinement); or (3) declaring a manifest injustice and sentencing to a maximum term of confinement.

c. For minor/first offenders (Schedule D-1), the court has three options: (1) sentencing to the standard range; (2) sentencing to a term of community supervision (maximum of $100 fine, one year supervision, and/or 150 hours community service); or (3) declaring a manifest injustice and sentencing to a maximum term of confinement [s. 13.40.160, Revised Code of Washington].

4. Calculation of Sentence

Once a juvenile has been adjudicated a delinquent, the calculation of the sentence proceeds as follows:

a. The points for each current offense are calculated using Sentencing Schedules A, B and C.

Schedule A assigns an offense category for each of the various law violations in the Washington Code (e.g., first-degree murder is "A+," simple assault is "D+").

Schedule C is then used to determine the current offense points for the violation, depending on the age of the child. For example, a child

age 13 who commits a category A offense (e.g., arson) has 300 current offense points.

If the child has committed any prior offenses, an increase factor for each prior offense is calculated from Schedule B. The increase factor depends on the seriousness of the prior offense (i.e., its offense class) and its recency (whether committed within 0-12 months, 13-24 months or more than 24 months previously). For example, if the child has 300 points from Schedule C and has a Class A offense within 12 months of the current offense, the current offense points (300) are multiplied by the increase factor (.9) and the result (270 points) are added on to the current offense points for a total of 570 points.

b. The most serious current offense is then used to determine whether the offender is a serious, middle or minor/first offender (e.g., as noted in Item 2, above, a child who commits murder is a "serious offender").

c. Then, the schedule of sentencing options (D-1, D-2 or D-3) which are appropriate to the offender's category is selected (i.e., one Schedule is D-1 for a minor/first offender; a second Schedule is D-2 for a middle offender; and a third Schedule D-3 is for a serious offender).

d. Finally, one of the sentencing options prescribed in the appropriate schedule is selected. For example, a serious offender with 300 points is subject to the following choices:

(1) Under the standard range, 80 to 100 weeks of institutionalization; or

(2) If there is a "manifest injustice," a disposition outside the standard range consisting of confinement or community supervision or a combination of the two (State of Washington, Juvenile Disposition Sentencing Standards, effective July 1, 1983).

B. EVALUATION

1. Evaluation by Jerome M. Wasson, Director, Division of Juvenile Rehabilitation, Department of Social and Health Services

Mr. Wasson responded to the inquiry regarding the effectiveness of the juvenile justice system in Washington by telephone and in a letter, dated September 6, 1984, with which was enclosed numerous materials regarding the Washington juvenile justice system.

Mr. Wasson explained that the creation of the presumptive juvenile disposition system was in response to public pressure to make the juvenile justice system more accountable and uniform. Opponents of the new system were fearful that it would cause overcrowding of the training schools and a decrease in rehabilitation efforts by juvenile authorities. These fears, according to Mr. Wasson, have not come true.

Regarding the effectiveness of the current juvenile justice system in Washington, Mr. Wasson pointed out that the system is more accountable and uniform and the dispositions are proportional to the nature of the offense. Mr. Wasson noted that the legislation which created the current system was not intended to deter or rehabilitate the juvenile offender. However, in practice, the system seems to be somewhat effective with respect to these two goals. He emphasized, however, that there are no hard data regarding the rehabilitative and deterrent effectiveness of the system.

Mr. Wasson noted that the members of the Sentencing Commission were unable to agree initially on the philosophy of the new juvenile justice system. However, after a series of meetings during which the Commission attempted to develop its philosophy regarding the new system, a consensus was reached and a group philosophy statement was developed.

Mr. Wasson explained that the juvenile sentencing standards or guidelines establish ranges of sanctions based on the juvenile offender's age, current offense seriousness and prior criminal history. Although judges may deviate from these guidelines, they are usually followed. The tendency of judges to follow the guidelines has, to an extent, reduced judicial discretion, he added.

The goal of the system is to establish a "just deserts" system of juvenile offender dispositions which encompasses the entire continuum of services that are appropriate for juvenile offenders, based on age, current offense seriousness and prior criminal history. Because of the uniformity of the guidelines, Mr. Wasson expressed the view that the new system has served to provide appropriate treatment services to offenders in various communities throughout the state.

2. Evaluation by the Urban Policy Research and the Institute of Policy Analysis

An evaluation of the impact of the current juvenile justice system in Washington is contained in Executive Summary of Preliminary Findings: Assessment of the Juvenile Justice Code (Report to the Washington State Legislature), dated January 20, 1981. This summary document contains findings based on research directed at assessing the "implementation and

consequences" of the new Washington Juvenile Justice Code. The assessment was funded by a grant awarded by the National Institute of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. As of the date of this Executive Summary, the project was only 1/3rd completed.

The assessment of the Washington Juvenile Justice Code was prepared by Donna D. Schram, Ph.D., and Jill G. McKelvy, Ph.D., of the Urban Policy Research, and Ann L. Schneider, Ph.D., and David B. Griswold, Ph.D., of the Institute of Policy Analysis. References in the following list of findings to "survey respondents" reflects the fact that the assessment involved a survey of juvenile justice practitioners throughout the state. The findings set forth in the Executive Summary include:

a. The juvenile justice system has been formalized and due process rights have been insured for offenders.

(1) The right to counsel at all critical stages of proceedings has been observed.

(2) Local rules, in combination with legislative limitations on detention without cause, have reduced substantially the likelihood that accused juveniles will be detained prior to adjudication.

(3) Official discretion has been severely limited by the formalization of the system. Specifically:

> With the possible exception of plea negotiations, the research indicates that prosecutors, probation counselors and juvenile court judges/commissioners have generally abided by the legislative restrictions and standards, or have provided written documentation to justify decisions that did not conform.

(4) Court proceedings have been made more open, but "...the public has demonstrated little interest in attending juvenile proceedings."

(5) Compliance with the new system has "...required new or additional resources in virtually every juvenile court jurisdiction surveyed."

b. Greater detail in the law regarding diversion procedures has addressed concerns regarding the adequacy of due process relating to these procedures.

c. The establishment of a uniform sentencing guidelines system for juvenile offenders has severely restricted the discretion of the juvenile

court regarding the kinds of dispositions it can impose for particular offenders.

According to the Executive Summary, the objective of the new Juvenile Justice Code was to bring about "more equity and proportionality in sentencing." Research has disclosed the following facts regarding sentencing practices:

(1) Judges are permitted to modify the standard sanctions imposed under a finding of "manifest injustice." Preliminary data obtained from the research effort indicate that: (a) manifest injustice was infrequently found; (b) when manifest injustice was found, it usually resulted in an increase in the sanctions imposed; and (c) increases in standard sanctions often resulted in the commitment of "uncommittable youth."

(2) Uniform disposition standards have been met with a mixed reception from persons involved in the juvenile justice system. The standards were criticized most frequently for their "rigidity, complexity and leniency with regard to repeat or chronic offenders."

(3) Survey respondents expressed alarm regarding the increased use of plea negotiations. Their concern was that "...bargaining or charge reductions violated the integrity of the system and the intent of the Legislature."

(4) Survey respondents expressed agreement that the standards had accomplished two major objectives--"...sentences were believed to be more fair and equitable, and youth were believed to be more accountable for their crimes."

d. The removal of most status offenders from the jurisdiction of juvenile court has had mixed results.

As explained in the Executive Summary, the basic philosophy guiding the new procedures for dealing with runaway and children in conflict with their families was that secure confinement and coercive contact with the juvenile court and with law enforcement should be limited to that which is necessary to protect the youth who is in serious danger or intended to assist the return of the runaway youth to his or her parents or placement in a residential facility. The survey has disclosed the following results regarding the implementation of this philosophy:

(1) Law enforcement responsiveness to runaway reports has decreased.

(2) Referrals of status offenders to detention by law enforcement or crisis intervention services have almost been eliminated entirely.

(3) Preliminary evidence suggests that some status offenders have been "relabeled" as offenders or mentally incompetent for the purposes of obtaining court jurisdiction over these juveniles.

(4) The divestiture of court jurisdiction over status offenses has eliminated the use of court-based services to runaways and families in conflict. Parents are no longer able to use the authority of the court as an extension of their control over their children, nor are the courts able to require "treatment" of children in families when no offense has been committed. The Legislature, however, intended that services be available to children and their families on a voluntary basis. Thus, a system of crisis services and shelter care has been created. The research of existing services shows that additional programs may be required in areas such as mental health and drug and alcohol treatment. Other programs, such as shelter care, may require extensive expansion or the creation of longer term residential care facilities for the more disturbed or destructive juvenile.

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APPENDIX A

STATE OF WASHINGTON
JUVENILE DISPOSITION SENTENCING STANDARDS
(Effective July 1, 1983)

STATE OF WASHINGTON

JUVENILE DISPOSITION SENTENCING STANDARDS

Effective July 1, 1983

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JUVENILE SENTENCING STANDARDS

INTRODUCTION:

It is the responsibility of the Juvenile Disposition Standards Commission to propose sentencing standards which establish determinant ranges of sanctions based on the offender's age, current offense seriousness, and prior criminal history.

The court's options in sentencing offenders vary by type of offender.

For serious offenders the court has two options: (A) Ordering the standard range, or (B) Declaring a manifest injustice and imposing a disposition outside the standard range.

For middle offenders the court has three options: (A) Sentencing to the standard range, (B) Sentencing to community supervision (maximum of $100 fine, 150 hours community service, one year of community supervision and after stating aggravating/mitigating circumstances, up to 30 days confinement), or (C) Declaring a manifest injustice and sentencing to a maximum term of confinement.

For minor/first offenders, the court has three options: (A) Sentencing to the standard range, (B) Sentencing to a term of community supervision (maximum of $100 fine, one year supervision, and/or 150 hours community service), or (C) Declaring a manifest injustice and sentencing to a maximum term of confinement.

INSTRUCTIONS:

After computing the points for each current offense using Sentencing Schedules A, B and C, use the following steps to determine the offender's disposition:

1. Using the most serious current offense, determine whether the offender is a serious, middle, or minor/first offender.

2. Select the schedule (D-1, D-2, or D-3) appropriate to the offender category (minor/first, middle, or serious).

3. Select one of the sentencing options from the appropriate schedule.

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JUVENILE COURT SENTENCING REPORT
SCHEDULE A
DJR CODE, DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DJR CODE	DESCRIPTION	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY OR SOLICITATION
		Arson and Malicious Mischief	
A	9A48020	Arson 1	B+
B	9A48030	Arson 2	C
C	9A48040	Reckless Burning 1	D
D	9A48050	Reckless Burning 2	E
B	9A48070	Malicious Mischief 1	C
C	9A48080	Malicious Mischief 2	D
D	9A48090	Malicious Mischief 3 (<$50 is E class)	E
E	0940100	Tampering with Fire Alarm Apparatus	E
A	0940120	Possession of Incendiary Device	B+
		Assault and Other Crimes Involving Physical Harm	
A	9A36010	Assault 1	B+
B+	9A36020	Assault 2	C+
C+	9A36030	Assault 3	D+
D+	9A36040	Assault (Simple)	E
D+	9A36050	Reckless Endangerment	E
C+	9A36060	Promoting Suicide Attempt	D+
D+	9A36070	Coercion	E
		Burglary and Trespass	
B+	9A52020	Burglary 1	C+
B	9A52030	Burglary 2	C
D	9A52060	Burglary Tools (Possession of)	E
D	9A52070	Criminal Trespass 1	E
E	9A52080	Criminal Trespass 2	E
D	9A52100	Vehicle Prowling	E
		Drugs	
E	6644270	Possession/Consumption of Alcohol	E
B	6941020	Illegally Obtaining Legend Drug	C
B	694103A	Sale, Del., Poss. of Legend Drug w/Intent to Sell	C
E	694103B	Possession of Legend Drug	E
B	695040A	Violation of Uniform Controlled Substances Act - Narcotic	B
C	695040B	Violation of Uniform Controlled Substances Act - Non-Narcotic	C
E	695040J	Possession of Pot < 40 grams	E
C	6950403	Fraudulently Obtaining Controlled Substance	C
C	6950410	Sale of Controlled Substance for Profit	C
E	947A050	Glue Sniffing	E

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JUVENILE DISPOSITION OFFENSE CATEGORY	DJR CODE	DESCRIPTION	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY OR SOLICITATION
		Firearms and Weapons	
A	0940120	Possession of Incendiary Device	B+
C+	0941025	Committing Crime When Armed	D+
E	0941050	Carrying Loaded Pistol Without Permit	E
E	0941240	Use of Firearms by Minor (<14)	E
D	0941250	Possession of Dangerous Weapon	E
D	0941270	Intimidating Another Person By Use of Weapon	E
		Homicide	
A+	9A32030	Murder 1	A
A+	9A32050	Murder 2	B+
B+	9A32060	Manslaughter 1	C+
C+	9A32070	Manslaughter 2	D+
B+	4661520	Negligent Homicide by Motor Vehicle	C+
		Kidnapping	
A	9A40020	Kidnap 1	B+
B+	9A40030	Kidnap 2	C+
C+	9A40040	Unlawful Imprisonment	D+
D	9A40050	Custodial Interference	E
		Obstructing Governmental Operation	
E	9A76020	Obstructing a Public Servant	E
B	9A76110	Escape 1 (before April 29, 1979)	C
C	9A76110	Escape 1* (after April 28, 1979)	D
C	9A76120	Escape 2 (before April 29, 1979)	D
C	9A76120	Escape 2* (after April 28, 1979)	D
D	9A76130	Escape 3	E
E	9A76040	Resisting Arrest	E
B	9A76140	Introducing Contraband 1	C
C	9A76150	Introducing Contraband 2	D
E	9A76160	Introducing Contraband 3	E
B+	9A76180	Intimidating a Public Servant	C+
B+	9A72110	Intimidating a Witness	C+
E	0923010	Criminal Contempt	E

*Escape 1 and Escape 2 committed after April 28, 1979 are classed as C offenses in the following manner:

1st escape during 12 month period - 4 weeks confinement
2nd escape during 12 month period - 8 weeks confinement
3rd and subsequent escape during 12 month period - 12 weeks confinement

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JUVENILE DISPOSITION OFFENSE CATEGORY	DJR CODE	DESCRIPTION	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY OR SOLICITATION
		Public Disturbance	
C+	9A8401W	Riot with Weapon	D+
D+	9A8401U	Riot without Weapon	E
E	9A84020	Failure to Disperse	E
E	9A84030	Disorderly Conduct	E
E	0923010	Criminal Contempt	E
		Sex Crimes	
A	9A44040	Rape 1 (formerly 0979170)	B+
B+	9A44050	Rape 2 (formerly 0979180)	C+
C+	9A44060	Rape 3 (formerly 0979190)	D+
B+	9A44070	Statutory Rape 1 (formerly 0979200)	C+
C+	9A44080	Statutory Rape 2 (formerly 0979210)	D+
C+	9A64020	Incest	D+
D+	9A8801C	Public Indecency (Victim < 14)	E
E	9A8801A	Public Indecency (Victim 14 or over)	E
B+	9A44100	Indecent Liberties (formerly 9A88100)	C+
E	9A88030	O & A (Prostitution)	E
B+	9A88070	Promoting Prostitution 1	C+
C+	9A88080	Promoting Prostitution 2	D+
		Theft, Robbery, Extortion and Forgery	
B	9A56030	Theft 1	C
C	9A56040	Theft 2	D
D	9A56050	Theft 3	E
B	9A56080	Theft of Livestock	C
C	9A60020	Forgery	D
A	9A56200	Robbery 1	B+
B+	9A56210	Robbery 2	C+
B+	9A56120	Extortion 1	C+
C+	9A56130	Extortion 2	D+
B	9A56150	Possession of Stolen Property 1	C
C	9A56160	Possession of Stolen Property 2	D
D	9A56170	Possession of Stolen Property 3	E
C	9A56070	Taking Motor Vehicle w/o Owner's Permission	D
		Motor Vehicle Related Crimes	
E	4620021	Driving w/o a License	E
D	4652020	Hit and Run	E
C	4661024	Attempting to Elude Pursuing Police Vehicle	D
E	4661500	Reckless Driving	E
D	4661515	Driving Under the Influence	E
B+	4661520	Negligent Homicide by Motor Vehicle	C+
D	9A52100	Vehicle Prowling	E
C	9A56070	Taking Motor Vehicle w/o Owner's Permission	D

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SCHEDULE A
DJR CODE, DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DJR CODE	DESCRIPTION	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY OR SOLICITATION
		Other	
B	0961160	Bomb Threat	C
B	9A76110	Escape 1 (before April 29, 1979)	C
C	9A76110	Escape 1* (after April 28, 1979)	D
C	9A76120	Escape 2 (before April 29, 1979)	D
C	9A76120	Escape 2* (after April 28, 1979)	D
D	9A76130	Escape 3	E
C	1019130	Failure to Appear in Court	D
E	0940100	Tampering with Fire Alarm Apparatus	E
E	0961230	Obscene, Harrassing, Etc., Phone Calls	E
A	0009988	Other Offense equivalent to an adult Class A Felony	B+
B	0009986	Other Offense equivalent to an adult Class B Felony	C
C	0009984	Other Offense equivalent to an adult Class C Felony	D
D	0009982	Other Offense equivalent to an adult gross misdemeanor	E
E	0009981	Other Offense equivalent to an adult misdemeanor	E
(Any Class)	0009980	Violation of County Probation	(Any Class)

*Escape 1 and Escape 2 committed after April 28, 1979 are classed as C offenses in the following manner:

1st escape during 12 month period - 4 weeks confinement
2nd escape during 12 month period - 8 weeks confinement
3rd and subsequent escape during 12 month period - 12 weeks confinement

JUVENILE COURT SENTENCING REPORT

SCHEDULE B
PRIOR OFFENSE INCREASE FACTOR

For use when all CURRENT OFFENSES occurred on or after July 1, 1981, i.e., amended standards apply.

	TIME SPAN		
OFFENSE CLASS	0-12 Months	13-24 Months	25 and Over
A+	.9	.8	.7
A	.9	.8	.6
B+	.9	.7	.4
B	.9	.6	.3
C+	.6	.3	.2
C	.5	.2	.2
D+	.3	.2	.1
D	.2	.1	.1
E	.1	.1	.1

Prior history - Any offense in which a diversion agreement or counsel and release form was signed, or any offense which has been adjudicated by the court to be correct prior to the commission of the current offense(s).

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SCHEDULE C
CURRENT OFFENSE POINTS

For use when all CURRENT OFFENSES occurred on or after July 1, 1981, i.e., amended standards apply.

	AGE					
OFFENSE CLASS	12 & Under	13	14	15	16	17
A+	S T A N D A R D R A N G E 125 - 156 Weeks					
A	250	300	350	375	375	375
B+	110	110	120	130	140	150
B	45	45	50	50	57	57
C+	44	44	49	49	55	55
C	40	40	45	45	50	50
D+	16	18	20	22	24	26
D	14	16	18	20	22	24
E	4	4	4	6	8	10

JUVENILE SENTENCING STANDARDS

SCHEDULE D-1

This schedule may only be used for Minor/First Offenders. After the determination is made that a youth is a minor/first offender, the court has the discretion to select sentencing option A, B or C.

MINOR/FIRST OFFENDER

OPTION A.

STANDARD RANGE

Points	Community Supervision		Community Service Hours		Fine
1-9	0-3 months	&/or	0-8	&/or	0-$10
10-19	0-3 months	&/or	0-8	&/or	0-$10
20-29	0-3 months	&/or	0-16	&/or	0-$10
30-39	0-3 months	&/or	8-24	&/or	0-$25
40-49	3-6 months	&/or	16-32	&/or	0-$25
50-59	3-6 months	&/or	24-40	&/or	0-$25
60-69	6-9 months	&/or	32-48	&/or	0-$50
70-79	6-9 months	&/or	40-56	&/or	0-$50
80-89	9-12 months	&/or	48-64	&/or	0-$50
90-109	9-12 months	&/or	56-72	&/or	0-$50

OR

OPTION B.

STATUTORY OPTION

0-12 Mo. Community Supervision
0-150 Hrs. Community Service
0-100 Fine

A term of community supervision with a maximum of 150 hours, $100.00 fine and 12 months supervision and no confinement.

OR

OPTION C.

MANIFEST INJUSTICE

When a term of community supervision would effectuate a Manifest Injustice, another disposition may be imposed. When a judge imposes a sentence of confinement exceeding 30 days, the court shall sentence the juvenile to a maximum term and the provisions of RCW 13.40.030(5), as now hereafter amended, shall be used to determine the range.

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JUVENILE SENTENCING STANDARDS

SCHEDULE D-2

This schedule may only be used for Middle Offenders. After the determination is made that a youth is a middle offender, the court has the discretion to select sentencing option A, B or C.

MIDDLE OFFENDER

OPTION A.

STANDARD RANGE

Points	Community Supervision		Community Service Hours		Fine		Confinement Days	Confinement Weeks
1-9	0-3 months	&/or	0-8	&/or	0-$10	&/or	0	
10-19	0-3 months	&/or	0-8	&/or	0-$10	&/or	0	
20-29	0-3 months	&/or	0-16	&/or	0-$10	&/or	0	
30-39	0-3 months	&/or	8-24	&/or	0-$25	&/or	2-4	
40-49	3-6 months	&/or	16-32	&/or	0-$25	&/or	2-4	
50-59	3-6 months	&/or	24-40	&/or	0-$25	&/or	5-10	
60-69	6-9 months	&/or	32-48	&/or	0-$50	&/or	5-10	
70-79	6-9 months	&/or	40-56	&/or	0-$50	&/or	10-20	
80-89	9-12 months	&/or	48-64	&/or	0-$50	&/or	10-20	
90-109	9-12 months	&/or	56-72	&/or	0-$50	&/or	15-30	
110-129								8-12
130-149	Middle offenders with more than 110 points do not have to be committed. They may be assigned community supervision under Option B.							13-16
150-199								21-28
200-249								30-40
250-299								52-65
300-374								80-100
375+								103-129

OPTION B.

COMMUNITY SUPERVISION AND/OR DETENTION

0-12 Mo. Community Supervision
0-150 Hrs. Community Service
OR 0-100 Fine

The court may impose a determinate disposition of community supervision and/or up to 30 days confinement; in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 130.40.150, as now or hereafter amended.

OPTION C.

MANIFEST INJUSTICE

OR If the court determines that a disposition under A and B would effectuate a Manifest Injustice, the court shall sentence the juvenile to a maximum term and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine range.

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JUVENILE SENTENCING STANDARDS

SCHEDULE D-3

This schedule may only be used for Serious Offenders. After the determination is made that a youth is a serious offender, the court has the discretion to select sentencing option A or B.

SERIOUS OFFENDER

OPTION A.

STANDARD RANGE	
Points	Institution Time
0-129	8-12 Weeks
130-149	13-16 Weeks
150-199	21-28 Weeks
200-249	30-40 Weeks
250-299	52-65 Weeks
300-374	80-100 Weeks
375+	103-129 Weeks
All A+ Offenders	125-156 Weeks

OR

OPTION B.

MANIFEST INJUSTICE
A disposition outside the standard range shall be determined and shall be comprised of confinement or community supervision or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding 30 days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now hereafter amended, shall be used to determine the range.